UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, v. **JESSE L. JACKSON, JR.**, Defendant.	Criminal No. 13-cr-00058 (RLW)

UNITED STATES OF AMERICA, v. **SANDRA STEVENS JACKSON**, Defendant.	Criminal No. 13-cr-00059 (RLW)

MEMORANDUM

The Court issues this brief *sua sponte* memorandum to explain, for the benefit of the public and the parties, my decision to give each of the parties in these two cases the opportunity to request reassignment of these cases to another judge if any party so desired. *See United States. v. Lawson*, 2007 WL 62854 (M.D. Ala. Jan. 09, 2007) (Myron H. Thompson, J.).

Every federal judge, upon appointment to the bench, takes an oath to "faithfully and impartially discharge and perform all the duties" of the judicial office. 28 U.S.C. § 453. In addition, Canon 3 of the Code of Conduct for United States Judges, adopted by the Judicial Conference of the United States, mandates that "a judge should perform the duties of the office fairly, impartially and diligently." Canon 3A(2) mandates that "a judge should hear and decide matters assigned, unless disqualified." Thus, once a case is randomly assigned to a judge, as

these cases were, the judge has a duty and responsibility to hear and decide the case unless s/he is disqualified from doing so.

A judge has an "independent obligation" to review each case and determine whether his/her disqualification is required. *United States v. Barrett*, 111 F.3d 947, 955 (D.C. Cir. 1997) (Tatel, J., concurring). The standards governing when a judge is required to disqualify him/herself from hearing a matter (also called recusal) are found both in federal law (28 U.S.C. § 455) and in Canon 3C of the Code of Conduct for United States Judges. Disqualification is required when the judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding," when the judge has a connection to the matter from private practice or government service prior to his/her appointment the bench, when the financial interest of the judge, a spouse or minor child could be substantially affected by the proceeding, or when the judge or a close family member has an interest that could be substantially affected by the case or is a party, lawyer or a potential material witness in the case. 28 U.S.C. § 455(b); Canon 3C(1)(a)-(e). None of those circumstances are present in this case.

However, federal law and Canon 3 also contain a more general disqualification rule, which provides that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." 28 U.S.C. § 455(a); Canon 3C(1). While this more general, catch-all standard is harder to construe, then-judge Breyer has explained that

> [W]hen considering disqualification, the district court is not to use the standard of "Caesar's wife," the standard of mere suspicion. That is because the disqualification decision must reflect not only the need to secure public confidence through proceedings that appear impartial, but also the need to prevent parties from too easily obtaining the disqualification of a judge, thereby potentially manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking.

In re Allied-Signal Inc., 891 F.2d 967, 970 (1st Cir. 1989) (Breyer, J.) (citation omitted) (disqualification not required where two of the judge's law clerks had brothers who represented plaintiffs). Accordingly, courts have held that disqualification was not necessary in many instances in which the assigned judge had a prior relationship with a party or a potential witness in the case, particularly if a great deal of time had passed since any contact between the judge and the party or witness. *See, e.g., United States v. Cole*, 293 F.3d 153, 158 (4th Cir. 2002) (disqualification not required where key government witness was son of the judge's deceased godparents, given that judge had not had any contact with the witness for more than 10 years); *Alexander v. Chicago Park Dist.*, 773 F.2d 850, 856–57 (7th Cir. 1985) (disqualification not required where judge had represented a witness 25 years earlier in an unrelated proceeding; it was "ancient history").

After considering the matter, the Court decided to make the following disclosure to the parties:

> In 1988, while a law student, Judge Wilkins served as a co-chair of Harvard Law School students supporting the presidential campaign of Rev. Jesse L. Jackson, Sr., and on October 24, 1988, Judge Wilkins introduced Rev. Jackson when he came to speak at a campus event supporting the presidential candidacy of Governor Michael Dukakis. On March 21, 1999, while an attorney, Judge Wilkins appeared as a guest on a show hosted by Rev. Jackson on the CNN network entitled "Both Sides with Jesse Jackson" to discuss a civil rights lawsuit in which Judge Wilkins was a plaintiff. Judge Wilkins believes that he has spoken to Rev. Jackson only on these two occasions, and he does not believe that he has ever met or spoken to the two defendants in these cases.

The Court does not have any bias or personal interest in this case based on these circumstances, and one could certainly argue, based on the precedent cited above, that these circumstances do not fall into the category in which a reasonable, well-informed person "might reasonably question" the Court's impartiality. Furthermore, as noted above, the Court has a duty to hear all

matters assigned to it unless circumstances require disqualification. However, out of an abundance of caution and to safeguard the rights of the parties, the Court decided to assume, for the sake of argument, that such a circumstance existed and determine whether all of the parties wanted nonetheless to proceed before the undersigned. Canon 3D provides that:

> Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

Accordingly, using the Model Form for Waiver of Judicial Disqualification approved by the Judicial Conference, the Court submitted the matter to the parties in accordance with Canon 3D. If any party wished, the matter would have been assigned to a different judge. However, each party has executed a waiver, so the matter remains with this Court

SO ORDERED.

February 20, 2013

Digitally signed by Judge Robert L. Wilkins
DN: cn=Judge Robert L. Wilkins, o=U.S. District Court, ou=Chambers of Honorable Robert L. Wilkins, email=RW@dc.uscourt.gov, c=US
Date: 2013.02.20 10:26:34 -05'00'

ROBERT L. WILKINS
United States District Judge